

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RITA FIFE)	
Claimant)	
VS.)	
)	Docket No. 162,556
THE BOEING COMPANY - WICHITA)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from a February 13, 1996, post-award Order by Administrative Law Judge John D. Clark denying claimant's Motion for Medical Treatment and Attorney Fees. The Appeals Board heard oral argument on June 20, 1996.

ISSUES

This is a post-award proceeding for medical treatment and attorney fees. Claimant's request for additional medical treatment was denied by the Administrative Law Judge. His February 13, 1996, Order was silent as to the question of attorney fees. The issues before the Appeals Board are:

- (1) Whether claimant is entitled to additional medical treatment.
- (2) Whether counsel for claimant is entitled to an award of a reasonable attorney fee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of counsel, the Appeals Board finds claimant has met her burden of proof that she is entitled to additional medical treatment. The question of what is a reasonable amount for attorney fees to be awarded to claimant's counsel should first be determined by the Administrative Law Judge.

An Award was entered in this matter on August 25, 1995, by Special Administrative Law Judge William F. Morrissey. That Award was appealed to the Appeals Board and, by Order of February 16, 1996, it was affirmed in all respects. Claimant was awarded a 53 percent permanent partial disability and future medical benefits upon proper application to and approval of the Director. Following said Award, claimant sought additional medical treatment by the filing of a form E-3 Application for Preliminary Hearing. That request was denied by the Administrative Law Judge in an Order dated November 1, 1995. Review of that Order was sought from the Appeals Board. However, since the Order was found to be a preliminary hearing Order pursuant to K.S.A. 44-534a, the Appeals Board determined that it did not have jurisdiction to review the issue concerning medical treatment. Claimant subsequently filed an Amended Motion for Review and Modification/Application for Future Medical and Attorney Fees. The denial of that motion by the Administrative Law Judge is the subject of this review.

Claimant seeks authorization of Dr. Mark N. Vinzant to provide treatment for her back pain, bilateral upper extremity pain, anxiety, and depression. Dr. Vinzant's medical records were admitted into evidence along with a medication flow sheet which indicates what medication claimant has been taking. Claimant previously underwent surgery to her back and surgery to treat carpal tunnel syndrome. She has testified to significant residual pain from those problems. In addition, claimant seeks treatment for anxiety and depression all of which she relates to her back injury. From the medical evidence presented, together with the testimony of claimant, the Appeals Board finds that claimant has met her burden of proof with regard to her need for additional medical treatment for her back. Accordingly, Dr. Vinzant is authorized to provide additional treatment for the back condition only.

Claimant's application for post-award medical treatment was brought pursuant to K.S.A. 44-528. Counsel for claimant is entitled to reasonable attorney fees. As the Administrative Law Judge's Order was silent on this issue, the claimant's request for attorney fees should first be presented to the Administrative Law Judge for a determination of a reasonable fee, including for the time spent for the prosecution of this appeal.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the

Order entered by Administrative Law Judge John D. Clark dated February 13, 1996, should be, and is hereby, reversed and Dr. Vinzant is hereby authorized to provide claimant with any reasonable and necessary medical treatment for her work-related back injury.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Frederick L. Haag, Wichita, KS
Vincent L. Bogart, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director